

1
2
3
4
5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 COMMUNITY ASSOCIATION FOR
8 RESTORATION OF THE
9 ENVIRONMENT, INC., a Washington
10 non-profit corporation,
11 and
12 FRIENDS OF TOPPENISH CREEK, a
13 Washington non-profit corporation,
14 Plaintiffs,
15 v.
16 SNIPES MOUNTAIN DAIRY, INC., a
17 Washington corporation,
18 Defendant.

NO. 1:17-CV-3067-TOR

STIPULATED PROTECTIVE
ORDER

18 1. PURPOSES AND LIMITATIONS

19
20 Discovery in this action is likely to involve production of confidential,
21 proprietary, or private information for which special protection may be
22 warranted. Accordingly, the parties hereby stipulate to and petition the Court to
23 enter the following Stipulated Protective Order. The parties acknowledge that this
24 agreement is consistent with FRCP 26(c). It does not automatically confer
25 blanket protection on all disclosures or responses to discovery, the protection it
26
27
28 STIPULATED PROTECTIVE ORDER - 1
29
30

affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. “CONFIDENTIAL” MATERIAL

“Confidential” material shall include the following documents and tangible things produced or otherwise exchanged:

- Documents pertaining to the purchase and sale of real and personal property formerly belonging to Snipes Mountain Dairy or used in operation of the Dairy.
- Financial documents pertaining to Henry Haak, Ev Haak, Snipes Mountain Dairy, Inc. and/or Red Hawk, LLC, including but not limited to tax returns, financial statements and balance sheets.

3. SCOPE

The protections conferred by this agreement cover not only confidential material (as defined above), but also (1) any information copied or extracted from confidential material; (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal confidential material.

//

//

1 However, the protections conferred by this agreement do not cover
2 information that is in the public domain or becomes part of the public domain
3 through trial or otherwise.
4

5
6 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

7 4.1 Basic Principles. A receiving party may use confidential material that
8 is disclosed or produced by another party or by a non-party in connection with
9 this case only for prosecuting, defending, or attempting to settle this litigation.
10 Confidential material may be disclosed only to the categories of persons and
11 under the conditions described in this agreement. Confidential material must be
12 stored and maintained by a receiving party at a location and in a secure manner
13 that ensures that access is limited to the persons authorized under this agreement.
14
15

16 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
17 otherwise ordered by the court or permitted in writing by the designating party, a
18 receiving party may disclose any confidential material only to:
19
20
21

- 22 (a) the receiving party’s counsel of record in this action, as well as
23 employees of counsel to whom it is reasonably necessary to disclose the
24 information for this litigation;
25
26
27

1 (b) the officers, directors, and employees (including in house counsel)
2 of the receiving party to whom disclosure is reasonably necessary for this
3 litigation, unless the parties agree that a particular document or material
4 produced is for Attorney's Eyes Only and is so designated;
5
6

7 (c) experts and consultants to whom disclosure is reasonably
8 necessary for this litigation and who have signed the "Acknowledgment and
9 Agreement to Be Bound" (Exhibit A);
10
11

12 (d) the Court, court personnel, and court reporters and their staff;

13 (e) copy or imaging services retained by counsel to assist in the
14 duplication of confidential material, provided that counsel for the party
15 retaining the copy or imaging service instructs the service not to disclose
16 any confidential material to third parties and to immediately return all
17 originals and copies of any confidential material;
18
19

20 (f) during their depositions, witnesses in the action to whom
21 disclosure is reasonably necessary and who have signed the
22 "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless
23 otherwise agreed by the designating party or ordered by the court. Pages of
24 transcribed deposition testimony or exhibits to depositions that reveal
25
26
27
28

1 confidential material must be separately bound by the court reporter and may
2 not be disclosed to anyone except as permitted under this agreement;
3

4 (g) the author or recipient of a document containing the information
5 or a custodian or other person who otherwise possessed or knew the
6 information.
7

8
9 4.3 Filing Confidential Material. Before filing confidential material or
10 discussing or referencing such material in court filings, the filing party shall
11 confer with the designating party to determine whether the designating party will
12 remove the confidential designation, whether the document can be redacted, or
13 whether a motion to seal or stipulation and proposed order is warranted.
14
15

16 5. DESIGNATING PROTECTED MATERIAL

17

18 5.1 Exercise of Restraint and Care in Designating Material for Protection.

19 Each party or non-party that designates information or items for protection under
20 this agreement must take care to limit any such designation to specific material
21 that qualifies under the appropriate standards. The designating party must
22 designate for protection only those parts of material, documents, items, or oral or
23 written communications that qualify, so that other portions of the material,
24
25
26
27

1 documents, items, or communications for which protection is not warranted are
2 not swept unjustifiably within the ambit of this agreement.
3

4 If it comes to a designating party's attention that information or items that it
5 designated for protection do not qualify for protection, the designating party must
6 promptly notify all other parties that it is withdrawing the mistaken designation.
7

8 5.2 Manner and Timing of Designations. Except as otherwise provided in
9 this agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as
10 otherwise stipulated or ordered, disclosure or discovery material that qualifies for
11 protection under this agreement must be clearly so designated before or when the
12 material is disclosed or produced.
13
14
15

16 (a) Information in documentary form: (*e.g.*, paper or electronic
17 documents and deposition exhibits, but excluding transcripts of depositions
18 or other pretrial or trial proceedings), the designating party must affix the
19 word "CONFIDENTIAL" to each page that contains confidential material.
20
21 If only a portion or portions of the material on a page qualifies for protection,
22 the producing party also must clearly identify the protected portion(s) (*e.g.*,
23 by making appropriate markings in the margins).
24
25
26
27

1 (b) Testimony given in deposition or in other pretrial proceedings: the
2 parties and any participating non-parties must identify on the record, during
3 the deposition or other pretrial proceeding, all protected testimony, without
4 prejudice to their right to so designate other testimony after reviewing the
5 transcript. Any party or non-party may, within fifteen days after receiving
6 the transcript of the deposition or other pretrial proceeding, designate
7 portions of the transcript, or exhibits thereto, as confidential. If a party or
8 non-party desires to protect confidential information at trial, the issue should
9 be addressed during the pre-trial conference.
10
11
12
13
14

15 (c) Other tangible items: the producing party must affix in a prominent
16 place on the exterior of the container or containers in which the information
17 or item is stored the word "CONFIDENTIAL." If only a portion or portions
18 of the information or item warrant protection, the producing party, to the
19 extent practicable, shall identify the protected portion(s).
20
21

22 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
23 failure to designate qualified information or items does not, standing alone, waive
24 the designating party's right to secure protection under this agreement for such
25 material. Upon timely correction of a designation, the receiving party must make
26
27
28

1 reasonable efforts to ensure that the material is treated in accordance with the
2 provisions of this agreement.
3

4 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

5
6 6.1 Timing of Challenges. Any party or non-party may challenge a
7 designation of confidentiality at any time. Unless a prompt challenge to a
8 designating party's confidentiality designation is necessary to avoid foreseeable,
9 substantial unfairness, unnecessary economic burdens, or a significant disruption
10 or delay of the litigation, a party does not waive its right to challenge a
11 confidentiality designation by electing not to mount a challenge promptly after
12 the original designation is disclosed.
13
14
15

16 6.2 Meet and Confer. The parties must make every attempt to resolve any
17 dispute regarding confidential designations without court involvement. Any
18 motion regarding confidential designations or for a protective order must include
19 a certification, in the motion or in a declaration or affidavit, that the movant has
20 engaged in a good faith meet and confer conference with other affected parties in
21 an effort to resolve the dispute without court action. The certification must list
22 the date, manner, and participants to the conference. A good faith effort to confer
23 requires a face-to-face meeting or a telephone conference.
24
25
26
27

1 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED
2 PRODUCED IN OTHER LITIGATION

3 If a party is served with a subpoena or a court order issued in other litigation
4 that compels disclosure of any information or items designated in this action as
5 “CONFIDENTIAL,” that party must:
6

7
8 (a) promptly notify the designating party in writing and include a copy
9 of the subpoena or court order;
10

11 (b) promptly notify in writing the party who caused the subpoena or
12 order to issue in the other litigation that some or all of the material covered
13 by the subpoena or order is subject to this agreement. Such notification shall
14 include a copy of this agreement; and
15

16
17 (c) cooperate with respect to all reasonable procedures sought to be
18 pursued by the designating party whose confidential material may be
19 affected.
20

21 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL
22

23 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
24 confidential material to any person or in any circumstance not authorized under
25 this agreement, the receiving party must immediately (a) notify in writing the
26 designating party of the unauthorized disclosures, (b) use its best efforts to
27
28 STIPULATED PROTECTIVE ORDER - 9
29
30

1 retrieve all unauthorized copies of the protected material, (c) inform the person
2 or persons to whom unauthorized disclosures were made of all the terms of this
3 agreement, and (d) request that such person or persons execute the
4 “Acknowledgment and Agreement to Be Bound” that is attached hereto as
5 Exhibit A.
6

7
8
9 9. IN ADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
10 PROTECTED MATERIAL

11 When a producing party gives notice to receiving parties that certain
12 inadvertently produced material is subject to a claim of privilege or other
13 protection, the obligations of the receiving parties are those set forth in Federal
14 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
15 whatever procedure may be established in an e-discovery order or agreement that
16 provides for production without prior privilege review. The parties agree to the
17 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.
18
19

20
21 10. NON TERMINATION AND RETURN OF DOCUMENTS
22

23 Within 60 days after the termination of this action, including all appeals,
24 each receiving party must return all confidential material to the producing party,
25
26

including all copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

Notwithstanding this provision, counsel are entitled to retain one archival copy of all documents filed with the court, trial, deposition, and hearing transcripts, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain confidential material.

The confidentiality obligations imposed by this agreement shall remain in effect until a designating party agrees otherwise in writing or a court orders otherwise.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD

Attorneys for Defendant

DATED: June 22, 2018

_____/s/_____
KENT NEIL DOLL, JR., WSBA 40549

_____/s/_____
KIRK A. EHLIS, WSBA 22908

STIPULATED PROTECTIVE ORDER -

Attorneys for Plaintiffs

_____/s/_____
SEANN M. MUMFORD, WSBA 43853

_____/s/_____
CHARLES M. TEBBUTT, WSBA 47255

_____/s/_____
ANDREA K. RODGERS, WSBA 38683

_____/s/_____
TOBY J. MARSHALL, WSBA 32726

_____/s/_____
BLYTHE H. CHANDLER, WSBA 43387

PURSUANT TO STIPULATION, IT IS SO ORDERED

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other proceeding in any other court, constitute a waiver by the

STIPULATED PROTECTIVE ORDER -

1 producing party of any privilege applicable to those documents, including the
2 attorney-client privilege, attorney work-product protection, or any other privilege
3 or protection recognized by law.
4

5 DATED August 22, 2018.
6



10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

Thomas O. Rice
THOMAS O. RICE
Chief United States District Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of

_____ [print or type full address], declare
under penalty of perjury that I have read in its entirety and understand the
Stipulated Protective Order that was issued by the United States District Court
for the Eastern District of Washington on _____ in the case of
*Community Association for Restoration of the Environment, Inc., a Washington
non-profit corporation; and Friends of Toppenish Creek, a Washington non-
profit corporation v. Snipes Mountain Dairy, Inc., a Washington corporation;*
Case No. 17-CV-03067. I agree to comply with and to be bound by all the terms
of this Stipulated Protective Order and I understand and acknowledge that failure
to so comply could expose me to sanctions and punishment in the nature of
contempt. I solemnly promise that I will not disclose in any manner any
information or item that is subject to this Stipulated Protective Order to any
person or entity except in strict compliance with the provisions of this Order.

STIPULATED PROTECTIVE ORDER -

1 I further agree to submit to the jurisdiction of the United States District Court
2 for the Eastern District of Washington for the purpose of enforcing the terms of
3 this Stipulated Protective Order, even if such enforcement proceedings occur
4 after termination of this action.
5

6
7 Date: _____

8
9 City and State where sworn and signed: _____

10 Printed name: _____

11
12 Signature: _____
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27